

# HOUSING LEASE FUTURES

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## LEASE CONSULTATION

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## FROM LEASE TO PEACE

The Housing Registrar has directed SEHC to prepare a new lease for members. There are two main requirements to meet the Housing Registrar directive—consult with members and consult with DHS.

DHS is dissatisfied with the new lease issued to members in June 2010 and has advised that the old lease does not conform with the Residential Tenancies Act and is not a prescribed lease under the Act.

In addition, the board has reviewed the lease and has agreed that changes are necessary.

The challenge is to develop a revised lease that satisfies DHS, the Housing Registrar and members—including those who lodged complaints.

On p 2 the Housing Registrar Directive is summarized as are the complaints of SEHC tenants who lodged complaints about the new lease with the Housing Registrar.

On p 3 we summarise DHS objections to the lease. DHS does not believe that simply renewing the old lease is a solution.

The board has committed itself to a consultation process involving area and general meetings of members and the establishment of a Lease Sub-Committee. The initial meetings are detailed on p 4. Further meetings will be organized on a as required basis

The Lease Committee will be a sub-committee of the Governance and Policy Committee of the board. It will have six voting members—three director members and three other members appointed by area meetings. The first meeting of the Lease Committee will be after the area meetings to prepare a report for the board and an agenda for the general meeting. The Lease Committee will continue to meet until a general meeting votes on the revised lease.

## SECURITY OF TENURE

Security of tenure is guaranteed for all members.

Most members recognize and accept this but some have thought that their security of tenure was at risk and the board apologises for any misunderstanding which the board may have contributed towards.

DHS wants all leases to be the same and equally secure in the public and commu-

nity housing sectors. According to DHS all public housing tenants are on periodic leases and have the same security of tenure as tenants on fixed term leases. About 70% of CEHL tenants are on periodic leases.

Security of tenure is guaranteed whoever is managing and owning properties.

## WE WERE WRONG

While most members have signed the new lease, we were wrong in forwarding the new lease and we apologise for this error of judgement.

First, the board did not ensure that the new lease issued in June 2010 was acceptable to DHS. The new lease was not referred to DHS. Instead, it was assumed that it was acceptable and that DHS would not object. This

was an incorrect assumption.

Second, we assumed that as the new lease was prepared by a solicitor compliant with the Residential Tenancies Act and the Housing Provider Framework was sufficient. But legal compliance is not sufficient as we manage the properties for DHS. While DHS has not queried the legality of the new lease, they have queried three conditions in the

lease. These are outlined on p 3.

Third we were wrong in attaching a licence about dual occupancy. This is being withdrawn.

Finally, we did not engage in a thorough consultation process with members on the new lease. We had assumed that the new lease was not controversial. This is now being rectified in the consultations process on a revised lease.

“There are those who look at things the way they are, and ask why... I dream of things that never were and ask why not”

## HOUSING REGISTRAR DIRECTIVE

In a 13 January 2011 letter to SEHC, the Housing Registrar has directed that a revised lease agreement should be prepared that remedies the concerns of SEHC tenants that complained to the Registrar and also requires SEHC to meet the expectations of DHS in respect of being consistent across both the public and social housing sectors.

The directive has been made using powers under s100 of the Housing Act 1983.

SEHC is required to provide evidence that the instruction has been met and that there has been proper consultation with tenants in finalizing a new lease.

SEHC has already met with DHS and DHS has detailed its expectations. See p 3.

## COMPLAINANT ISSUES

Based on information provided by DHS, complaints to the Housing Registrar focused on four areas.

First, the type of lease offered to tenants—a reviewable rather than a renewable lease.

Second, whether the new lease threatened security of tenure.

Third, the dual occupancy license that tenants were being asked to sign.

Four, the process undertaken by SEHC in changing from an old to a new lease—issuing a new lease without consultation.

## DHS CONCERN—PERIOD OF LEASE

DHS prefers a periodic lease instead of a fixed term lease. DHS says that public housing tenants are on periodic leases and, in practice, a periodic lease offers the same security of tenure as a fixed term lease.

DHS has also argued that the HPF lease and Property Management Agreement between DOH and SEHC expires in December

2011 and, therefore, any fixed term lease could not go beyond December 2011.

It cannot be assumed that SEHC will continue to manage the properties after December 2011. It is hoped that SEHC will continue to manage the properties but we cannot take this for granted. SEHC will have to earn the right to continue managing the

properties. There are other providers that could manage the properties for DHS. But whatever the future management arrangements security of tenure remains for all tenants.

## DHS CONCERN—MARKET RENTS

DHS believes that it is important to have the most appropriate information recorded on the lease that facilitates effective management. DHS does not want the subsidized (rebated/reduced) rent recorded on the tenancy agreements because this does not reflect the full amount of rent that tenants are required to pay.

DHS also believes that not providing market rents on the lease does not facilitate effective tenancy and financial management—constraining tenancy management and the flexibility to adjust rents in a timely fashion.

DHS argues that the market rent is the rent that OoH is legally entitled to record on the tenancy

agreement. DHS argues that the reduced rent is provided at discretion to eligible applicants.

**“The directors of a co-operative are elected by and accountable to the members of the co-operative”**

## DHS CONCERN—DUAL OCCUPANCY

DHS has also been concerned with clause (k) in the new lease and the license agreement which required tenants to agree to allow SEHC to construct further units or homes in back yards of homes leased by tenants.

In retrospect, it was well-meaning but nonsensical

to ask members to sign a licence when the properties are owned by DHS and only managed by SEHC.

This is why SEHC has already decided to withdraw the licence and any licences that have been signed by members will be rescinded.



## CONSULTATION MEETINGS

The board had already agreed to a consultation process with members at a meeting on 17 December 2011—before receiving and knowing about the Housing Registrar's directive on 13 January

<b>Frankston Area</b> 7 to 9 pm 6 <sup>th</sup> April 2011 Samuel Sherlock Hall Quality St, Frankston Melways - 100A F8	<b>Member General Meeting</b> 7 to 9 pm 9 May 2011 Dandenong Club Corner Stud and Heatherton Roads, Dandenong—Melways 90 F7
<b>Bayswater Area</b> 7 to 9 pm 11 April 2011 Arrabri Community House Allambanan Drive Bayswater North 3153 Melways - 65 A1	<b>Moorabbin Area</b> 7 to 9 pm 4 <sup>th</sup> April 2011 Bentleigh Bayside Community Health Centre Gardeners Road Bentleigh East Melways - 77 K1

Further area and general meetings will be organized as necessary. Members who wish to have meetings in other areas should submit a request to the General Manager. Meetings will be organized in other locations provided a minimum of five members commit to attending these meetings.

## VCAT Decision

On the 22 February 2011 VCAT upheld a decision to renew the lease of a tenant who had objected to the new lease.

The tenant will remain on the old lease for a period of five years minus one day and a reduced rent will be recorded on the tenancy agreement.

The decision, therefore, goes against the preference of DHS

Both DHS and SEHC will accept the VCAT decision

If more tenants exercise their right to go to VCAT, DHS will expect SEHC to continue to oppose fixed term leases and reduced rents being recorded in the lease.

## LEASE CONSULTATION PROCESS

There will be area and general meetings.

As well as this special edition of Housing Futures, a separate agenda for the area meetings will be forwarded to members.

Area meetings will be encouraged to adopt resolutions as determined by the members present which will be referred to a Lease Committee, board and included on the agenda of the general meeting of members on the 9 May 2011 for decisions.

If the movers and seconders of resolutions adopted by area meetings are unable to attend the general meeting, then, other members can move and second the motions.

Each area meeting will also be asked to nominate

a member for a Lease Committee which will first meet before the general meeting of members on 9 May 2011.

The Lease Committee will be a sub-committee of the Governance and Policy Committee. Three directors are on the Lease Committee and they will be joined by three Area Committee representatives. The Area Meetings representatives will be nominated at area meetings. Area meeting representatives will be eligible for the same travel and caring costs as directors.

Minutes will be taken of each area meeting. The minutes will record attendance, time of start and finish, date and location and any resolutions adopted.

Any resolutions adopted by members at area meetings will be taken to a general meeting of members.

Area meetings are not general meetings of the co-operative as provided for in the Rules of the co-operative and cannot, therefore, make decisions for the whole membership. Decisions are made at the general meetings.

These initial area and general meeting will provide input into the process of developing a revised lease.

A revised lease will be made available to members as soon as possible. Area and general meetings will proceed whether or not a revised lease is available because the issues and choices are clear and choices are clear.